

SUPREME COURT OF ARKANSAS

No.

IN RE: BOARD OF CERTIFIED
COURT REPORTER
EXAMINERS

Date: October 11, 2007

PER CURIAM

The Board of Certified Court Reporter Examiners has submitted proposed changes to Administrative Order Number 4, The Rule Providing for Certification of Court Reporters, and The Regulations of the Board of Certified Court Reporter Examiners. We have reviewed the Board's work, and we now publish the suggested amendments for comment from the bench, bar, and public. The proposed changes are set out in "line-in, line-out" fashion (new material is italicized; deleted material is lined through).

Comments on the suggested changes should be made in writing before January 1, 2008, and they should be addressed to: Leslie W. Steen, Clerk, Supreme Court of Arkansas, Attn.: Board of Certified Court Reporter Examiners, Justice Building, 625 Marshall Street, Little Rock, Arkansas 72201.

A. ADMINISTRATIVE ORDER NUMBER 4 - VERBATIM TRIAL RECORD

(a) Verbatim Record. Unless waived on the record by the parties, it shall be the duty of any circuit court to require that a verbatim record be made of all proceedings pertaining to any contested matter before it.

(b) Back-up System. When making a verbatim record, an official court reporter or substitute court reporter shall always utilize a back-up system in addition to his or her primary reporting system in order to insure preservation of the record.

(c) Exhibits. Physical exhibits received or proffered in evidence shall be stored pursuant to the requirements of Section 21 of the Regulations of the Board of Certified Court Reporter Examiners, Official Court Reporter Retention Schedule.

(d) Sanctions. Any person who fails to comply with these requirements shall be subject to the discipline provisions of the Rules and Regulations of the Board of Certified Court Reporter Examiners in addition to the enforcement powers of the court, including contempt.

B. RULE PROVIDING FOR CERTIFICATION OF COURT REPORTERS

Section 7. Revocation or suspension.

(a) Generally. The Board for good cause shown after a hearing by the Board, may revoke or suspend any certificate issued by the Board.

Within thirty (30) days of receipt of written findings of the Board suspending or revoking a certificate, the aggrieved court reporter may appeal said findings to the Supreme Court of Arkansas for review de novo upon the record. Such appeal shall be prosecuted by filing a written notice of appeal with the Clerk of the Supreme Court of Arkansas with a copy thereof to the Chair of the Board. The notice of appeal shall specify the party taking the appeal; shall designate the order of the Board from which appeal is sought; and, shall designate the contents of the record on appeal. The notice shall also contain a statement that the transcript, or specific portions thereof, have been requested. ~~from the Executive Secretary. The Executive Secretary shall certify~~

~~the record as being a true and correct copy of the record as designated by the parties and~~ It shall be the responsibility of the appellant to transmit such record to the Supreme Court Clerk. The record on appeal shall be filed with the Supreme Court Clerk within ninety (90) days from filing of the first notice of appeal, unless the time is extended by order of the Board. In no event shall the time be extended more than seven (7) months from the date of entry of the initial order of the Board. Such appeals shall be processed in accord with pertinent portions of the Rules of the Supreme Court and Court of Appeals of the State of Arkansas.

* * *

Section 9. Scope.

a. After the effective date of this Rule, all transcripts taken in court proceedings, depositions, or before any grand jury will be accepted only if they are certified by a court reporter who holds a valid certificate under this Rule. Provided, however, that depositions taken outside this state for use in this state are acceptable if they comply with the Arkansas Rules of Civil Procedure.

b. Disciplinary Authority. An Arkansas certified court reporter is subject to the disciplinary authority of this jurisdiction, regardless of where the court reporter's conduct occurs. A court reporter not certified in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the court reporter provides or offers to provide any court reporter services in this jurisdiction. A court reporter may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

C. REGULATIONS OF THE BOARD OF CERTIFIED COURT REPORTER EXAMINERS

Section 4.

Applicants, other than those certified without examination pursuant to Section 6, shall file not later than 30 days prior to the next examination date, a written application in the form prescribed by the Court, together with an application fee of ~~\$50.00~~ *as set forth in Section 3 of these Regulations*, with the Clerk of the Supreme Court. Said application fee shall not be refunded in the event the applicant decides not to take the examination or fails the examination. Said application shall state by which method the applicant will test, and certification will be issued solely in that method if the applicant successfully passes the examination.

Section 12

~~At the discretion of the Board, any eligible applicant not certified pursuant to the *per curiam* order of the Supreme Court of Arkansas, dated July 5, 1983, or any eligible applicant who is certified in another state, may be granted a single, non-renewable temporary certificate to enable said applicant to work. The applicant for a temporary certificate must also timely apply to test and must test on the next scheduled examination date. The temporary certificate issued shall expire fourteen days after a reporter receiving such a certificate has had an opportunity to pass the examination. The certificate shall reflect the expiration date on its face as well as the method of reporting.~~

Applicants for temporary certificates will be considered by the Board only if the applicant meets the following requirements:

~~a. the applicant has been granted a diploma or equivalent from a court reporting school which is recognized and accepted by the Board, or~~

~~b. the applicant has completed one year's continuous work experience in court reporting in a state which does not require certification, or~~

~~c. the applicant has been certified as a court reporter in a sister state, or by the National Shorthand Reporters' Association, or by the National Stenomask Verbatim Reporters' Association.~~

Section 14.

The tests shall be as follows:

* * *

(b) (3) Five minutes of ~~one-voice~~ *two-voice* dictation of Q and A at 225 words per minute.

* * *

Section 17.

~~The Board shall maintain a file containing names and pertinent information on all individuals who have been certified, including all verbatim notes or records, transcripts, and other papers used in connection with testing. All test applications and graded tests may be destroyed after a period of two years from the date of testing.~~

The Executive Secretary of the Board will forward the files containing the names and pertinent information for all individuals who have passed the certification test to the Supreme Court Clerk's office where said files will be maintained and stored.

The Executive Secretary will maintain and store all other files pertaining to test results, including all verbatim notes or records, transcripts, and other papers used in connection with testing for a period of two years following the date of testing, at which time the Executive Secretary may dispose of said files.

It shall be the responsibility of the certified court reporter to provide the Office of the Supreme Court Clerk with written notification of any change of address within fourteen (14) working days.

For the purposes of these regulations, written notification by certified or first class mail to the most recent address provided to the Office of the Clerk shall be deemed sufficient.

Section 19.

Pursuant to Section 7 of the Rules of the Board of Certified Court Reporter Examiners, the Board may revoke or suspend any certificate issued after proper notice and hearing, on the following grounds:

- a. conviction of a felony, conviction of a misdemeanor involving moral turpitude. Conviction is defined as a plea of guilty, or nolo contendere, or guilty verdict.
- b. misrepresentation or omission of material facts in obtaining certification.
- c. any intentional violation of, noncompliance with or gross negligence in complying with any rule or directive of the Supreme Court of Arkansas, any other court of record within this State, or this Board.
- d. fraud, dishonesty, gross incompetence or habitual neglect of duty.
- e. *unprofessional conduct, which shall include, but not be limited to:*

- 1. failing to deliver a transcript to a client or court in a timely manner as determined by statute, court order or agreement;*
- 2. intentionally producing an inaccurate transcript ;*
- 3. producing an incomplete transcript except upon order of a court, agreement of the parties, or request of a party;*
- 4. failing to disclose as soon as practical to the parties or their attorneys existing or past financial, business, professional or family relationships, including contracts for court reporting services, which might reasonably create an appearance of partiality;*
- 5. advertising or representing falsely the qualifications of a certified court reporter or that an unlicensed individual is a certified court reporter;*
- 6. failing to charge all parties or their attorneys to an action the same price for an original transcript and failing to charge all parties or their attorneys the same price for a copy of a transcript or for like services performed in an action;*
- 7. failing to disclose upon request an itemization in writing of all rates and charges to all parties in an action or their attorneys ;*
- 8. reporting of any proceeding by any person who is a relative of a party or their attorney;*
- 9. reporting of any proceeding by any person who is financially interested in the action or who is associated with a firm which is financially interested in the action;*
- 10. failing to notify all parties, or their attorneys, of a request for a deposition transcript, or any part thereof, in sufficient time for copies to be prepared and delivered simultaneously with the original;*

11. *going "off the record" during a deposition when not agreed to by all parties or their attorneys unless otherwise ordered by the court;*

12. *giving, directly or indirectly, benefitting from or being employed as a result of any gift, incentive, reward or anything of value to attorneys, clients, or their representatives or agents, except for nominal items that do not exceed \$100 in the aggregate for each recipient each year; and*

13. *charging for a copy of a deposition transcript at a rate more than one-third (1/3) the per page cost of the original and first copy, or an official reporter charging fees in violation of Ark. Code Ann. Section 16-13-506.*

_____The notice shall state the cause for the contemplated revocation or suspension and the time and place of the hearing before the Board, and shall be mailed to the registered address of the holder of the certificate at least thirty days prior to the hearing. The Board shall make written findings of fact based on the evidence presented.

Section 21.

OFFICIAL COURT REPORTER RECORDS RETENTION SCHEDULE

PART 1. Scope. a. This records retention schedule applies to all official court reporters in the State of Arkansas. "Official court reporter" as used in this retention schedule means a court reporter, certified by the Arkansas Board of Certified Court Reporter Examiners, who is regularly employed by a circuit, ~~chancery, or circuit/chancery~~ judge, or a "substitute court reporter," who serves in the absence of the regularly employed court reporter.

* * *

PART 3. Responsibility for Storage; Sanctions. a. During the period which the records are required to be retained, it shall be the responsibility of the official court reporter to maintain his or her records in an orderly, secure, and identifiable manner. It is highly recommended that space be provided in the county courthouse in the county where the official court reporter maintains an office or resides. If that is not feasible, it shall be the responsibility of the official court reporter to provide adequate space for the records.

b. When physical exhibits include firearms, contraband, or other similar items, such items may be transferred to the sheriff or other appropriate governmental agency for storage and safekeeping. The sheriff or governmental agency shall sign a receipt for such items and shall acknowledge that the items shall not be disposed of until authorized by subsequent court order. Other items of physical evidence which present storage problems may be transferred to the attorney of record for storage and safekeeping subject to approval of the trial court and upon appropriate documentation. Forms of orders and receipts for the transfer and disposal of exhibits are appended to Regulation 21.

c. If an official court reporter leaves his or her position for any reason other than his or her death, the reporter shall, within thirty (30) days, deliver or cause to be delivered, those records as defined in PART 1, to the trial court and retained by the court until a subsequent official court reporter is employed or retained, at which time the records shall be transferred to that reporter. A former official court reporter who maintains Arkansas certification may, with the court's permission, temporarily retrieve his or her former records necessary to prepare an appeal transcript or other documents which a party may request.

d. If an official court reporter dies while still in possession of those records subject to retention as defined in PART 1, the trial court shall take possession of those records within thirty (30) days of the official court reporter's death. The trial court shall retain possession of the records until a subsequent official court reporter is employed or retained. At that time the records shall be transferred to the possession of the subsequent official court reporter who shall safely maintain the records subject to the direction of the trial court.

e. Any person who fails to comply with or who interferes with these transfer provisions may be ordered to appear and show cause why he or she should not be held in contempt of court.

* * *

PART 5. Log of Records, Sanctions. *a.* Each official court reporter shall maintain an accurate, orderly log of his or her records which also notes the date and method of destruction of each record listed. Any work papers maintained by the reporter for the purpose of identifying the record of court proceedings shall suffice, as long as they are legible. When an official court reporter leaves his or her position for whatever reason, the trial court shall take possession of the log no later than the date he or she takes possession of the records as set out in PART 3. When a subsequent official court reporter is employed or retained, the log shall be transferred to the possession of the subsequent official court reporter who shall safely maintain the log subject to the direction of the trial court.

b. Any person who fails to comply with or who interferes with this Section may be ordered to appear and show cause why he or she should not be held in contempt of court.

Part 6 of the Per Curiam dated Oct. 16, 1995, set out the Official Court Reporter Retention Schedule:

TYPE OF CASE**PERIOD OF RETENTION****Criminal Cases**

Death Penalty	Permanently
Life in Prison w/o Parole	Permanently
Other Felonies (transcript lodged with appellate court)	90 days after Mandate issues
Other Felonies (no transcript prepared)	5 years from date of verdict or sentencing
Misdemeanors	2 years from date of sentencing

<u>Grand Jury Proceedings</u>	1 year subsequent to adjournment
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Civil Circuit

All Cases (transcript lodged with appellate court)	90 days after Mandate issues
All Cases (no transcript prepared)	2 years from date of final order of trial court

Chancery Cases

All Cases (transcript lodged	90 days after Mandate issues
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~~with appellate court)~~

~~All Cases ————— 2 years from date of final order of the trial court~~

~~(no transcript prepared)~~

Probate

~~All Cases ————— 90 days after Mandate issues~~

~~(transcript lodged~~

~~with appellate court)~~

~~All Cases ————— 2 years from date of final order of trial court~~

~~(no transcript prepared)~~

* * *

APPENDIX (Regulation 21)

Receipt and Acknowledgment Order

for Transfer of Trial Court Exhibits

IN THE CIRCUIT COURT OF _____ COUNTY, ARKANSAS

_____ DIVISION

_____ PLAINTIFF

V. NO. _____

_____ DEFENDANT

ORDER

The following exhibits in the above styled case are hereby ordered transferred for storage and safekeeping to:

Exhibit No. _____ (DESCRIPTION)

Exhibit No. _____

Exhibit No. _____

Exhibit No. _____

***THESE ITEMS MAY NOT BE DISPOSED OF WITHOUT THE COURT'S PERMISSION
EVIDENCED BY A WRITTEN ORDER.***

IT IS SO ORDERED.

Circuit Judge

Date

*I ACKNOWLEDGE RECEIPT OF THE PHYSICAL EXHIBITS DESCRIBED ABOVE AND
FURTHER ACKNOWLEDGE MY UNDERSTANDING THAT THESE ITEMS MAY NOT BE
DISPOSED OF WITHOUT FURTHER ORDER OF THE COURT, AND I AGREE TO RETURN
THESE ITEMS TO THE COURT WHEN SO DIRECTED.*

*(SHERIFF/GOVERNMENTAL AGENCY/
ATTORNEY OR OTHER ENTITY)*

Date

[Receipt shall be filed in case file with the circuit clerk]

*Order for Disposal of Trial Court Exhibits
and Acknowledgment of Receipt for Disposal*

DIVISION

The following exhibits in the above styled case may be disposed of in a manner consistent with the Regulations of the Board of Certified Court Reporter Examiners:

Exhibit No. _____

[The exhibit(s) shall be transferred to _____ for disposal pursuant to law.]

IT IS SO ORDERED.

Circuit Judge

Date

I ACKNOWLEDGE RECEIPT OF THE PHYSICAL EXHIBITS DESCRIBED ABOVE FOR DISPOSAL PURSUANT TO LAW.

*(SHERIFF/GOVERNMENTAL AGENCY/
ATTORNEY OR OTHER ENTITY)*

Date

[Receipt shall be filed in case file with the circuit clerk]

SECTION 22

~~It is the purpose of this Regulation to ensure that when a Court Reporter is providing services under any contractual agreement, the Court Reporter maintain his or her impartiality and not give or appear to give an exclusive advantage to any party.~~

~~Therefore, Court Reporters, or any entity providing the services of a Court Reporter, are hereby prohibited from providing services under any contractual agreement that: (1) requires the Court Reporter to relinquish control of an original deposition transcript and copies of the transcript before it is certified and delivered to the custodial attorney; or (2) requires a Court Reporter to provide any service not made available to all parties to an action.~~

a. The purpose of this rule is to ensure the integrity of the record and to avoid the appearance or potential for deferential treatment of parties to an action. Court reporters serve as officers of the court and both the appearance and existence of impartiality are no less important for officers who take depositions than for judicial officers and other persons whose responsibilities are integral to the administration of justice.

b. The court reporter taking the deposition, or the firm or any other person or entity with whom such court reporter has a principal and agency relationship or is otherwise associated, shall not enter into a contractual or financial agreement, arrangement or relationship for court reporting services, whether written or oral, with any attorney, party to an action, insurance company, third-party administrator, or any other person or entity that has a financial interest in an action, which gives the appearance that the impartiality and independence of the court reporter has been compromised. Specific examples of arrangements that are prohibited include ones that:

1. Establish rates and terms for court reporting services that extend beyond a single case, action, or proceeding;

2. Include a court reporter on any list of preferred providers of court reporting services after exchanging information and reaching an agreement specifying the prices or other terms upon which future court reporting services will be provided, whether or not the services actually are ever ordered;

3. Allow the format of the transcript to be manipulated to affect pricing;

4. Require the court reporter taking the deposition to relinquish control of an original deposition transcript and copies of the transcript before it is certified;

5. Fail to offer comparable services, in both quality and price, to all parties or otherwise require the court reporter to provide special financial terms or other services that are not offered at the same time and on the same terms to all other parties in the litigation;

6. Allow the court reporter to communicate directly with a party of interest, other than a pro se party, except to provide invoices; and

7. Base the compensation of the court reporter on the outcome or otherwise give the court reporter a financial interest in the action.

c. These prohibitions do not apply to situations where fees or special services may be negotiated, provided that they are the same for all parties and are negotiated on a case-by-case basis. Also, these prohibitions do not extend to governmental entities, if they are required by law to obtain court reporting services on a long-term basis through competitive bidding.

d. Any violation of these prohibitions shall be enforceable by the court in which the underlying action is pending. Without otherwise limiting the inherent powers and discretion of

the court, a deposition taken in violation of these prohibitions shall constitute a violation of Rule 28(d) of the Arkansas Rules of Civil Procedure (disqualification for interest), and be subject to all sanctions for such a violation under the Rules of Civil Procedure. In addition, any court reporter, firm, attorney, or party that willfully violates these prohibitions may be subject to fine or sanction by the court, and a court reporter may be subject to disciplinary proceedings before the Board of Certified Court Reporter Examiners.

e. These rules shall be applicable to all court reporting services provided on or after _____, 2008.